

**United States Department of Labor
Employees' Compensation Appeals Board**

T.S., Appellant)

and)

DEPARTMENT OF THE NAVY, PUGET)
SOUND NAVAL SHIPYARD &)
INTERMEDIATE MAINTENANCE FACILITY,)
Bremerton, WA, Employer)

Docket No. 22-1089
Issued: October 10, 2024

Appearances:
Appellant, pro se,
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER REMANDING CASE

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge

JANICE B. ASKIN, Judge

VALERIE D. EVANS-HARRELL, Alternate Judge

On July 20, 2022 appellant filed a timely appeal from an April 7, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned the appeal Docket No. 22-1089.¹

On January 21, 2022 appellant, then a 30-year-old heavy mobile equipment mechanic, filed a traumatic injury claim (Form CA-1) alleging that on January 12, 2022 she had an adverse reaction to a COVID-19 vaccine. She noted that she experienced blurred vision, numbness in her forehead and tongue, nausea, trouble speaking, neck stiffness, headache and body ache, sharp pain in her temples, and confusion.

In support of her claim, appellant submitted January 12, 2022 emergency department notes, wherein Dr. John Ngo, a Board-certified emergency medicine physician, reported that appellant presented with complaints of neck pain, nausea, and a severe bilateral forehead headache that radiated throughout her head. Dr. Ngo noted that appellant had a history of migraines, but that

¹ The Board notes that, following the September 27, 2022 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

they were not usually as severe. He diagnosed non-intractable headache, unspecified chronicity pattern, unspecified headache type.

In a January 13, 2022 visit note, Dr. Thomas Duncan, a Board-certified family medicine physician, related that appellant presented for follow-up due to symptoms of confusion, blurred vision, and headache, which began six days after she received her second injection for her COVID-19 vaccination. He further related that, after her first injection for her COVID-19 vaccination, she had developed chest pain and shortness of breath. Dr. Duncan diagnosed headache syndrome secondary to adverse reaction to the COVID-19 vaccine and opined that appellant should not receive further COVID-19 vaccines.

Appellant continued to submit medical evidence in support of her claim.

By decision dated April 7, 2022, OWCP denied appellant's traumatic injury claim, finding that the medical evidence of record was insufficient to establish "that the claimed medical condition is causally related to the COVID-19 vaccine." It found that appellant's treating physician "did not explain how the work event(s) caused or affected [her] condition...." Therefore, the requirements had not been met to establish an injury and/or medical condition causally related to the accepted employment incident.

The Board, having duly considered this matter, finds that the case is not in posture for decision.

Executive Order No. 14043, effective September 9, 2021, mandated COVID-19 vaccination for most Federal employees.² To provide coverage for claims for injury on or after September 9, 2021, resulting from receipt of the mandated COVID-19 vaccination for Federal employees, OWCP issued FECA Bulletin No. 22-01, which outlines specific procedures for administering such claims.

FECA Bulletin No. 22-01 provides, *inter alia*, that when a claim is received for injury due to receipt of the COVID-19 vaccination, the claims examiner should: (1) determine if the vaccine was received prior to September 9, 2021; and (2) confirm that the employee is covered by the September 9, 2021 executive order. If the employee is covered by the executive order and vaccination was received on or after September 9, 2021, coverage may be afforded under FECA for employees impacted by the mandate who received required COVID-19 vaccinations on or after the date of the executive order for: (1) adverse reactions to the COVID-19 vaccination; and (2) injuries sustained as the direct result of an employee receiving their mandated vaccination.³

In denying appellant's claim, OWCP failed to consider whether coverage should be administered in accordance with FECA Bulletin No. 22-01. Rather, it evaluated the medical evidence of record and found that it was insufficient to establish an injury and/or medical condition causally related to the accepted employment incident. As OWCP did not apply FECA Bulletin No. 22-01, it failed to follow its own procedures.⁴

² Exec. Order No. 14043, 86 Fed. Reg. 50989 (September 9, 2021).

³ FECA Bulletin No. 22-01 (issued October 1, 2021).

⁴ See generally *Order Remanding Case, R.S.*, Docket No. 23-0283 (issued December 8, 2023).

This case shall therefore be remanded for application of FECA Bulletin No. 22-01 with regard to appellant's claim.⁵ Following any further development as deemed necessary, OWCP shall issue a *de novo* decision. Accordingly,

IT IS HEREBY ORDERED THAT the April 7, 2022 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this order of the Board.

Issued: October 10, 2024
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

⁵ *Id.*